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U.S. SUPREME COURT CLARIFIES TEST TO DETERMINE CORPORATE CITIZENSHIP FOR PURPOSES OF DIVERSITY JURISDICTION

For purposes of diversity jurisdiction, "a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business." 28 U.S.C. §1332(c)(1). In *Hertz Corporation v. Friend*, 559 U.S. _____ , 130 S.Ct. 1181 (02/23/2010), the United States Supreme Court recently resolved a conflict among the Circuits regarding the interpretation of the phrase "principal place of business". The Supreme Court concluded that the phrase "principal place of business" refers to a corporation's "nerve center" or corporate headquarters.

In *Hertz*, two California citizens filed a class action lawsuit against Hertz in a California state court. Hertz removed the case to federal court based upon diversity jurisdiction, claiming that its "principal place of business" was in New Jersey. The claimants asserted that Hertz was a California citizen and that diversity jurisdiction was lacking. The District Court for the Northern District of California agreed with the claimants and found that Hertz was a citizen of California. The District Court reached this conclusion by examining the amount of Hertz's business in each State to determine where the amount of activity was "significantly larger" or "substantially predominates". If the amount of activity is "significantly larger" or "substantially predominates" in one State, then that State is the corporation's "principal place of business". If there is no such State, then the "principal place of business" is the corporation's "nerve center". Applying this test, The District Court determined that Hertz was a California citizen. The Ninth Circuit affirmed on appeal.

In order to establish a single, more uniform interpretation of the phrase "principal place of business", the Supreme Court considered the legislative history of the federal diversity jurisdiction statute and the different interpretations used by the Circuit courts. The Supreme Court ultimately concluded that "principal place of business" is best read as referring to the place where the corporation's high level officers direct, control, and coordinate the corporation's activities, also called its "nerve center". The Supreme Court recognized that a corporation's "nerve center" is typically its corporate headquarters.

The Hertz court cited three main reasons for defining "principal place of business" to mean a corporation's "nerve center": (1) the language of the federal diversity jurisdiction statute supports its interpretation; (2) a "nerve center" approach is relatively simpler to apply than other tests which measure the amount of a corporation's business activities; and (3) the statute's legislative history suggests that a less complex interpretation was intended.

Applying its streamlined "nerve center" analysis, the Supreme Court determined that Hertz was a citizen of New Jersey – the location of its corporate headquarters. This decision will have an affect on where plaintiffs can file their lawsuits.

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"PRESCRIBED MEANS" EXCEPTION DOES NOT APPLY TO NATURAL ACCUMULATION RULE IN FIRST DISTRICT APPELLATE COURT

In *Reed v. Galaxy Holdings, Inc.*, 2009 WL 2590089 (1st Dist. 2009), the plaintiff filed suit for injuries she allegedly sustained from falling after slipping on a puddle inside a Laundromat. At her deposition the plaintiff stated that it was raining that day and that the pavement near the Laundromat entrance was wet. Prior to her fall the plaintiff entered and exited the Laundromat three times, carrying her laundry inside the Laundromat from her car. There were two sets of doors. One set was a set of exterior doors leading to a vestibule, and the second was a set of doors leading to the inside of the Laundromat. On her final trip inside the Laundromat, the plaintiff walked through the exterior set of doors, walked off a mat on the vestibule floor and slipped on a puddle of water.

The trial court granted the defendant summary judgment, finding that the defendant did not owe a duty because the plaintiff slipped on a natural accumulation of water. On appeal, the plaintiff argued that the defendant had a duty to reasonably maintain the sole point of entrance and exit for its business invitees, which is known as the "prescribed means" exception to the natural accumulation rule. Plaintiff's sole support for the "prescribed means" exception was the federal case of *Radovanovic v. Wal-Mart Stores East, Inc.*, 2006 WL 305890 (N.D. Ill. 2006).

The Appellate Court affirmed the trial court, stating that Illinois law clearly holds that property owners are not liable for injuries caused by slips upon natural accumulations of rain, ice or snow that are tracked into a business from the outside. The Appellate Court went on to say that because property owners are not responsible to remove natural accumulations, they do not have a duty to warn of tracked in water, ice or snow. The Appellate Court stated that liability can only be imposed upon a property owner if there is evidence that the means of ingress and egress was unsafe for some reason other than a natural accumulation. In the *Reed* case, there was no evidence that the puddle was anything other than a natural accumulation or that the defendant had caused or aggravated the accumulation of the water. There was also no evidence of any defect in the design, construction or maintenance of the property or that it was improperly illuminated.

With regard to the "prescribed means" exception to the natural accumulation rule, the Appellate Court noted that the plaintiff's only support for the exception is a federal case, which the Illinois Appellate Court is not bound to follow. The Appellate Court rejected the plaintiff's request to adopt the "prescribed means" exception, stating that Illinois does not adhere to that exception.

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FIFTH DISTRICT HOLDS THAT A HOSPITAL'S STATUTORY LIEN IS SUBJECT TO REDUCTION UNDER COMMON FUND DOCTRINE

In the consolidated cases of *Howell v. Dunaway* (No. 5-09-0071) and *Wendling v. Woolard* (No. 5-09-0072) from Williamson County, Illinois, the Fifth District was asked to decide whether a hospital's statutory lien for services filed pursuant to the Health Care Services Lien Act (770 ILCS 23/1, et seq) is subject to a reduction under the common fund doctrine for attorneys' fees incurred by the injured plaintiff in seeking recovery against the defendant. The common fund doctrine is an equitable concept that an attorney who performs services in creating a fund should be allowed compensation out of the whole fund from all who seek to benefit from it.

The hospitals in these cases argued that the common fund doctrine did not apply to hospital liens under the Act. They relied upon a 1979 Illinois Supreme Court decision in *Maynard v. Parker* which held that the common fund doctrine did not apply to the debtor/creditor relationship between the injured plaintiff and the hospital, but only applies to a traditional subrogor/subrogee relationship where the *obligation* to pay arises only from the plaintiff's recovery against a third party. However, the circuit courts hearing the present cases relied on a more recent Illinois Supreme Court ruling in *Bishop v. Burgard* which they held expanded the common fund doctrine even though the Supreme Court itself did not expressly hold that it did.

On review the Fifth District Appellate Court agreed that *Bishop* broadened the doctrine. It found that the hospital's action was in the nature of an enforcement of a lien and that the lien only existed by virtue of the creation of the fund. The lien would be worthless unless the plaintiff's attorney was able to successfully assert the injured party's claim.

The hospital's *right* to payment may not be dependent on the creation of the fund, but its statutory *lien* is dependent on the fund because it specifically and expressly attaches only to the common fund. The hospital can avoid paying its share of the legal costs by not asserting its lien against the recovery and simply using other means to collect its debt. The Court did not address the hospitals' contention that requiring them to pay part of the legal costs creates a conflict between the plaintiff and his/her attorney as the plaintiff will be responsible for paying whatever amount goes to the plaintiff's attorney rather than to the hospital because of the reduction.

This decision may impact settlement discussions as the hospitals may be more willing to settle their liens for a reasonable amount if they will be incurring part of the cost of having the case go through a full trial.

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TRIALS AND CASE DISPOSITIONS

Julie Ramson obtained a verdict in favor of two clients in a recent medical malpractice trial. The plaintiffs claimed that their baby was stillborn because a C-section was not timely performed. Julie showed that her

midwife client had timely called for the C-section and turned the care over to a hospital obstetrician, but he could not do the C-section because the anesthesiologist did not answer his pages for approximately 40 minutes. Julie's second client was an obstetrician who came to the hospital and attempted to deliver the baby while they were waiting for the anesthesiologist, but he was unable to do so. The hospital had settled prior to trial. **Dawn Ehrenberg** and **Kristin Tauras** assisted with the trial.

Jim DeNardo obtained a summary judgment in the U. S. District Court, Northern District of Illinois, in favor of an insurance company client in a breach of contract case brought against the insurance company by one of the company's independent contractor insurance agents. The agent claimed the insurance company terminated him without giving him six month's notice as provided in the contract. The insurance company defended on the basis that the agent had violated a provision of the contract that allowed for termination without notice. The court agreed with the insurance company and entered summary judgment in favor of the insurance company and against the insurance agent.

TAX SAVINGS ALERT

Many taxpayers have benefitted from the conversion of traditional IRAs to Roth IRAs. The conversion often results in long-term tax savings on IRA funds, but a current tax does arise on the conversion.

A 2006 law (the Tax Increase Prevention and Reconciliation Act "TIPRA") included a provision eliminating the $100,000.00 income limit for tax years beginning in 2010. What this means is that taxpayers who previously were not eligible to convert to a Roth IRA because their income was too high can now make the conversion.

If the conversion is accomplished in 2010, there is a deferral of payment of the resulting tax until 2011 and 2012- a significant benefit. We recommend that you contact your financial advisor to determine if this opportunity is right for you.

IRS CIRCULAR 230 NOTICE: Pursuant to recently enacted U.S. Treasury Department Regulations, we are now required to advise you that, unless otherwise expressly indicated, any federal tax advice expressed above was neither written nor intended by the sender or this firm to be used and cannot be used by any taxpayer for the purpose of avoiding penalties that may be imposed under U.S. tax law. If any person uses or refers to any such tax advice in promoting, marketing or recommending a partnership or other entity, investment plan or arrangement to any taxpayer, then the advice should be considered to have been written to support the promotion or marketing by a person other than the sender or this firm of that transaction or matter, and such taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

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